

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	14-NOI-01
Notice of Inquiry regarding retail)	
electric market issues)	

**RESPONSE TO ORMD QUESTIONS AND SELECTED SUMMARIES
ON BEHALF OF THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION**

The Illinois Competitive Energy Association (“ICEA”) appreciates the opportunity to respond to the questions posed by the Office of Retail Market Development (“ORMD”) of the Illinois Commerce Commission (“ICC” or “Commission”) regarding the above-referenced Notice of Inquiry (“NOI”) that has been initiated by the Commission regarding retail electric market issues. ICEA responds to all questions directed at “ICEA,” but individual members reserve their respective rights to separately respond to any questions, including those directed at “Suppliers.”

In addition to responding to questions directed at ICEA, ICEA wishes to reiterate its position on certain questions that were included in the document sent by ORMD but initially posed in late 2014. To be clear, ICEA’s positions have not changed from its first three rounds of comments submitted on November 6, 2014 (“Initial Comments”), December 3, 2014 (“Response Comments”), and January 8, 2015 (“Third Round Comments”). However, ICEA believes a concise reiteration of its earlier positions will provide further context to its responses below and help resolve any potential confusion. ICEA’s failure to reiterate a particular position should not be construed as an abandonment or repudiation of that position. ICEA’s selected and limited summaries follow in Section II below. To the extent that ORMD or the Commission do not wish to consider responses to previously-asked questions—including ICEA’s summaries of previous

positions below—ICEA either respectfully requests that Section II below not be considered or would respond to an ORMD or Commission request to resubmit this document without Section II.

I.

RESPONSES TO NEW ORMD QUESTIONS

Questions for RESA and ICEA:

Do you consider any of the following marketing examples as misleading? Please explain your answer.

If you do find one or more of the examples misleading, please explain what, if anything, the Commission should do to address the issue.

In addition, please state whether you believe any mention of percentages in the examples below should automatically translate into including such percentages into a single “% renewable energy” column on the PlugInIllinois.org website.

Given that you oppose creating separate % columns for renewable energy and RECs, please describe how a customer is able to discern any differences between the various attributes of the “green” energy options below.

Example 1: “Choose 100% wind from Supplier X today! By choosing the Pollution Free™ Reliable Rate product over typical system power, an Illinois household with monthly usage of 700 kWh can prevent more than 13,000 lbs. of CO2 emissions a year.”

Example 2: The “Fixed Pure Green is 100% renewable, coming purely from local wind sources.”

Example 3: “It’s easy to do your part to cut air pollution with 100% Clean, pollution free energy from new, renewable energy farms located near our customer base.”

Example 4: “Our 100% renewable electricity plan is environmentally friendly.”

Example 5: “100% of your electricity will be generated from clean, renewable wind sources.”

Example 6: “The electricity will be 100% renewable energy from clean energy sources such as solar, wind, hydro, and biomass.”

Example 7: “The 100% wind Renewable Plan is Green-e® Energy certified.”

Example 8: “Green month to month variable plan.”

Example 9: “The Everyday Green rate combines sustainability and affordability. The Everyday Green rate comes from 50% renewable sources in addition to the State of Illinois Renewable Portfolio Standards.”

Example 10: “Green Fixed Rate of x cents per kWh for 12 months.”

Example 11: “Residential 100% Green Choice Product”

ICEA RESPONSE: With regard to whether “any mention of percentages in the examples below should automatically translate into including such percentages into a single ‘% renewable energy’ column on the PlugInIllinois.org website,” ICEA believes that implementation of a single % renewable energy column raises a number of issues. The first issue the Commission would need to address would be the definition of “renewables” to use for deciding which renewables should be included in the single “% renewable energy” column. As ICEA described in its Initial Comments:

The term “renewable” can represent a continuum, from the purchase of RECs in any state, purchase of locally sourced RECs or RECs from new build sources, all the way to PPAs for energy from RES owned individual facilities. Similarly, ICEA recognizes that “green” can include a renewable component, but also can hit on any number of sustainability strategies from reducing all or certain fossil fuels to supporting customer efforts to obtain efficiency upgrades or distributed generation. Given this diversity, ICEA believes that the wide range of options should not be unnecessarily restricted by a narrow, and likely difficult to change, regulatory imposed definition of “green” or “renewable.”

(ICEA Initial Comments at 17.) With a broad definition that includes a wide variety of “green” products, relatively more products should be included in the percentage as self-reported by RES. Second, to the extent the Commission considers a definition of “renewable energy” that is relatively narrower, a RES should be able to provide a percentage for the “% renewable” column that may be different from the “greenness” of the product as presented to consumers in advertising or marketing materials. For example, if the Commission defined the “% renewable”

column extremely narrowly to only include RECs purchased from Illinois RPS eligible resources with an accompanying supply PPA,¹ the RES may be able to truthfully advertise about the emissions reductions from RECs purchased in Texas—but the response for the “% renewable” column would reflect only the Commission-approved definition. In addition, to the extent other governmental bodies (such as U.S. EPA in its anticipated greenhouse gas rules) defines “green,” “clean,” or other similar terms, RES should be able to rely on those definitions in communicating with potential and current customers.

With regard to the question, “Given that you oppose creating separate % columns for renewable energy and RECs, please describe how a customer is able to discern any differences between the various attributes of the ‘green’ energy options below,” ICEA is not sure it fully understands the question. Based on the “green” energy options identified by ORMD (which will be discussed in more depth below), there may actually be no difference between most or all of the options presented. Responding further, a REC is defined as the embodiment of the environmental attributes of a unit of power, according to the Illinois Power Agency Act:

"Renewable energy credit" means a tradable credit that represents the environmental attributes of a certain amount of energy produced from a renewable energy resource.

(20 ILCS 3855/1-10; *see also* 220 ILCS 5/16-115D(a)(1) (applying IPA Act definition of “renewable resources,” which explicitly includes “renewable energy credits,” to the RES RPS).) Because the REC represents the environmental attributes of energy generated from environmentally preferable sources as defined by Section 1-10 of the IPA Act, ICEA is unsure what the practical difference is for customers between RECs and “renewable energy.” By definition, a renewable generation source produces power corresponding to the RECs, but a

¹ ICEA presents this definition as an absurd example and does not recommend that the Commission adopt such a narrow definition for PlugInIllinois.

MWh generated and sold to a RES for resale to an end-use customer, it is stripped of its environmental attributes unless it remains paired with a REC.

Of course, some customers may wish to purchase a product that includes both RECs and supply contracted from renewable energy resources. This may take many forms, from a PPA with an Illinois-based asset to fuel specific to resource (location) specific. Nothing prevents any or all RESs from offering such a product. That said, just because a variation is available in the market does not mean that variation must be reflected on the PlugInIllinois website. PlugInIllinois should be designed to capture the high-level comparison between products and summarize the key terms—as more dynamic price products arrive on the market and RES offer more value added services,² it will become more and more difficult to capture in a column-comparison format all differences and nuances between products on the matrix. Instead of trying to capture every detail about every offer, PlugInIllinois should continue to simplify the process for potential customers by narrowing down the offers of interest to allow the customer to then explore offers of interest in more depth.³

With regard to whether any of the descriptions above are misleading, ICEA respectfully notes that it has insufficient facts to determine whether the examples proffered are misleading or not. More specifically, “misleading” depends in large part on the renewable energy resources procured by the supplier in support of the customers on those products. Responding further, there is a difference between how individual RES markets itself and its products in advertisements, how a RES must describe its products in disclosures mandated by Part 412, and

² For instance, ICEA is not aware how PlugInIllinois currently captures offers that are tied to affinity programs (i.e. sign up for service with X supplier and receive points/miles/credits through a separate rewards program). These sorts of offers are part of the competitive market, but need not necessarily be captured by a separate column on PlugInIllinois.

³ The goal of the PlugInIllinois website should not be to push customers to specific offers but to help potential customers narrow down a wide range of offers based on broad but pertinent parameters to a smaller subset of offers that the potential customer can then explore in greater detail.

how a government entity (the Commission) describes those products on PlugInIllinois. The official government description should be streamlined to provide a clear, big picture approach and let individual RES explain the finer points of each offer. As noted above, the definition the Commission uses for PlugInIllinois may not cover the universe of all “green” offerings, nor does the definition of resources eligible for ARES to use for the Illinois RPS.

Question for ICEA: Explain why the minimum fixed price term should not be 6 months instead of the 3 months you propose.

ICEA RESPONSE: At the outset, ICEA notes that ComEd and Ameren “fixed price” bundled service is “fixed” for four summer months and “fixed” for eight nonsummer months. (*See, e.g.,* ILL. C.C. No. 10, 2nd Revised Sheet No. 130 (ComEd definition of “Nonsummer Period”) and Original Sheet No. 133 (ComEd definition of “Summer Period”).⁴ Any period shorter than four months would prevent the bundled rate from being a fixed price product, which ICEA understands is not sought by the utilities at this time.

Responding further, ICEA wishes to emphasize that three months is a minimum rather than a maximum. However, the three month minimum coincides with the approximate length of each season. Due to seasonal differences and differing customer appetite for risk, some customers may appreciate a product that stays fixed for three months (triple the fixed term of a month-to-month product), but can capture market savings during the three non-summer seasons. Customers who prefer a fixed price over a longer period of time can now, and are anticipated to continue to be able to, buy those products on the market.

Question for ICEA: Besides the recent PJM capacity performance proposal and changes in the state’s renewable portfolio standards, what other “cost components outside of a supplier’s control” would ICEA consider to fall under such a contract provision?

⁴ ICEA uses “fixed” in quotations because, of course, the Purchased Electricity Adjustment changes the total rate paid by customers every month without meaningful advance notice to the customer.

ICEA RESPONSE: ICEA cannot anticipate the ways in which federal, interstate (RTO), state, and local legislators or regulators may change the rules of the game during the pendency of a contract. As a general rule, ICEA believes that risks that can be hedged in the market should be borne by the supplier in a fixed price contract, while risks that cannot practically be hedged (such as regulators changing the rules of the game but also non-market based costs) should be eligible for passthrough to customers of fixed price contracts per the terms of the contract. This concept allows expectations to be set for an anticipated market structure, with an understanding that if the market structure changes the customer may share in or take on the responsibility.

Question for ICEA: If a contract states that “the price may fluctuate based on an increase in PJM demand-based pricing components that have been included in the price (demand-based ancillary services, capacity [including auction rates, zonal scaling factors and forecast pool requirements], and transmission service)”, should the offer/product be considered a fixed price offer/product?

ICEA RESPONSE: It depends on how often the fluctuations may occur. Assuming the Commission adopts ICEA’s recommended definition of fixed price product, prices changes every three months would still be considered a fixed price offer/product. . If the Commission defines fixed price products as requiring longer fixed timeframes (for instance, four or more months), then the product would have to be constant for those timeframes as well to be considered a fixed priced offer/product. Also, with regard to capacity specifically, to the extent that:

- One of the following two events occurs:
 - One or more utilities adopts a form of capacity unbundling as advocated by ICEA (including in ICC Docket No. 14-0312) and/or
 - The Illinois Power Agency procures Fixed Price Full Requirements products as advocated by ICEA (including in ICC Docket No. 14-0588);

And in addition:

- One or more utilities allows RES using utility consolidated billing to include capacity as a separate line item on the supply charge,

then capacity “fluctuating” more frequently may be deemed to be acceptable as part of an otherwise fixed price product. ICEA realizes that several prerequisites are necessary with regard to this capacity unbundling scenario, nevertheless ICEA encourages the Commission to keep in mind how any future capacity unbundling might fit into its fixed price definition.

Further, with regard to known and unknown risks, a RES should have the ability to pass through unknowable risks (such as an RTO changing the capacity auction structure after a contract is signed). As a corollary, ICEA notes that while some RTO products, such as capacity, are market-based and thus hedgeable, others (NITS, ancillary services) are not market based and thus are more akin unknown risks.

Question for ICEA: If a contract states that the seller and buyer “recognize that components of the pricing include electric tariff charges that are authorized by the ICC, PJM, the FERC, and/or any other state or governmental agency having jurisdiction” and that “any increase in these charges may be directly passed through to buyer by a corresponding increase in the pricing”, should the offer/product be considered a fixed price offer/product?

ICEA RESPONSE: Please see ICEA’s responses above. Responding further, the answer is maybe. It depends on what timeframe those costs are recovered—if, for example, a fixed price product is defined as ICEA recommended and prices are modified every three months (and the RES makes adequate disclosures), then this product would fit the definition of a fixed price product.

II.

SUMMARIES OF ICEA RESPONSES TO ORMD QUESTIONS

Variable Rate Offers

1. What type of disclosure requirements do you believe are necessary for variable rate offers to ensure consumers understand that the rate fluctuates?

ICEA SUMMARY OF PREVIOUS RESPONSES: In the first three rounds of comments and in the contemporaneous workshops, ICEA took a clear position on this matter. To reiterate, ICEA recommended disclosure for variable rates to be handled in one of two ways. The first way is for the RES to provide the customer with the formula for the rate, such as identifying an index plus any adjustment. (*See, e.g.*, ICEA Response Comments dated December 3, 2014 at 16-17.) Alternatively, the RES could not disclose the formula but instead provide the customer with sufficient advance notice of price changes to allow the customer to leave service before the price changes take effect. Obviously, the latter option works better the shorter switching times become. The underlying concept was and continues to be customer to have actionable information about their chosen variable product. (*See, e.g.*, ICEA Third-Round Comments dated January 8, 2015 at 4; ICEA Initial Comments dated November 6, 2014 at 12-13.)

Any discussion or rulemaking surrounding variable rates must recognize and address the fact that the current switching processes inhibit a customer's ability to leave a variable rate quickly. Accelerated switching should be included in any variable rate discussion.

3. Should the Commission adopt a requirement that a residential variable rate has to be tied to a publicly available index/benchmark?

ICEA SUMMARY OF PREVIOUS RESPONSES: No. There are many ways to create a variable rate and market (an index is only one). (*Cf.* ICEA Initial Comments at 6-9 (offering product definitions including Variable Non-Index and Time Of Use).) Requiring a rate to be tied to an index would limit a supplier's ability to hedge or protect month to month price and force all

variable price customers to fully exposed market pricing. While index pricing is one option that should be available, another is opting for a percentage month over month cap. Ultimately, the goal as described above should be clear information for a customer to know exactly what their price is in a manner that allows the customer to take action. Customers on any variable pricing option tied to market will go where market prices go but how far they swing with the market must be within the discretion of the supplier. Variable capped prices are different in that a customer's price would not exceed a set amount but could vary under the cap. The Commission must be careful not to limit variable products to only those tied to market which can fluctuate greatly.

4. Should the Commission adopt additional notice requirements for variable rate changes?

ICEA SUMMARY OF PREVIOUS RESPONSES: To the extent that the Commission formally prescribes how notice of variable rate changes should be communicated, notice requirements in the mail should not be the only option. Suppliers should have the ability to send notices through email, text or other electronic options which are less likely to end up in the junk mail pile—especially when getting information to customers is time-sensitive. The Commission must recognize the line between over noticing with high costs and no results and finding the most effective way to communicate with a customer.

5. Should the Commission require suppliers to set and disclose a maximum rate for each residential variable rate offer?

ICEA SUMMARY OF PREVIOUS RESPONSES: No. (*See, e.g.*, ICEA Initial Comments at 14.) However, clear disclosure of the terms and conditions of a variable product is necessary. If the product is tied to market prices is going to vary with market then an index may be appropriate. If it is up to the supplier and the customer to choose a variable price with a cap that

comes at a cost because it would require hedging and other strategies—and thus affect the price that the RES could or would offer to the customer. Although if there is sufficient demand for a capped or banded product it is anticipated that the competitive retail market will offer it. However, just because some customers may want and some RES may offer a capped or banded product does not and should not mean that all variable rate products must have a maximum rate.

6. Should sales of variable rate offers be prohibited from implying future savings unless the basis for such implied savings is provided?

ICEA SUMMARY OF PREVIOUS RESPONSES: Yes. No supplier should imply savings without the necessary information provided to the customer to show the basis. Alternatively, ICEA proposed that savings guarantees that are not met should be backed by refund or other compensation. (*See, e.g., ICEA Initial Comments at 14; see also, e.g., 83 Ill. Admin. Code § 412.110(o).*)

7. Should the Commission require suppliers to provide its customers with readily available access to rates, including historical rates, current rates, as well as imminent changes to the rates?

ICEA SUMMARY OF PREVIOUS RESPONSES: Historical rates are not indicators of future prices and can be misleading, especially in a market where it can take up to two months for a switch to occur. (*See, e.g., ICEA Third-Round Comments at 6-8.*) Regarding current rates, suppliers may make available rates and costs on their websites and on the PlugInIllinois website. However, suppliers also have products solely for win back, affinity programs, and customers who are part of loyalty programs. These should not be generally posted as it creates confusion and a poor customer experience when a customer is told they are ineligible for a particular rate. It should also be noted that while these restrictions may be listed on a website reality is customers still call to request them. The better approach is to only list those generally available and allow the supplier to determine if restricted or win back products should be listed.

Price-To-Compare

- 1. Should the Commission specify how a supplier has to portray the utility Price-to-Compare?**

ICEA SUMMARY OF PREVIOUS RESPONSES: It is important to have a single PTC available to the marketplace to help inform consumers. (*See ICEA Initial Comments at 21.*) The Commission can determine what components go into a price to compare and that suppliers use what is on the PlugInIllinois website. However, the Commission should not dictate that suppliers include this in marketing pieces unless the marketing runs afoul of a preexisting regulatory requirement (such as an explanation of guaranteed savings). Only that which is identified on the PlugInIllinois rate be used.

- 2. Should the Commission require a uniform method of price comparison based on usage intervals?**

ICEA SUMMARY OF PREVIOUS RESPONSES: No. This is an onerous process and gives very little information to a customer unless they have varying rates based on actual usage. Especially as we get further into time of use rates, usage intervals provides no easy or helpful information.

Consumer Education

- 1. Do you propose additional ways to increase traffic to PlugInIllinois.org?**

- On page 5 of its Reply Comments, ComEd states that ICEA's proposal of Ameren and ComEd adding periodic bill messages to check PlugInIllinois.org for the latest information about the bundled and competitive rates should be rejected. ComEd stated that "RESs may raise issues with ComEd providing such a notice for all customers, as ComEd does not target subgroups of customers with these types of messages."**

Question for the suppliers: Do you object to such periodic bill messages being included for all customers?

ICEA SUMMARY OF PREVIOUS RESPONSES: No objection.

- 2. Should the Commission Staff create a website and/or document with all laws and regulations relevant to retail electric suppliers in Illinois?**

ICEA SUMMARY OF PREVIOUS RESPONSES: Yes.

3. Should the Commission Staff hold periodic workshops to discuss existing rules?

ICEA SUMMARY OF PREVIOUS RESPONSES: Yes – it would keep all suppliers large and small aware of not only rules but also expectations and a better understanding of the spirit of the rule and the Commission’s enforcement priorities. ICEA supports the approach of Pennsylvania of holding annual workshops. (*See ICEA Initial Comments at 25.*)

4. Should utilities be required to display the supplier logo on a utility-consolidated bill?

ICEA SUMMARY OF PREVIOUS RESPONSES: Yes. (*See ICEA Initial Comments at 26.*)

It would allow customers to have better visibility of who is on their bill. Or in the alternative the ICC should lift the all in requirement for residential customers to use utility consolidated billing and allow supplier consolidated billing for any customer.

Cancellation/Rescission

1. Should a customer be entitled to the previous rate if she cancels the contract within a set number of days of being notified of the new rate?

ICEA SUMMARY OF PREVIOUS RESPONSES: As noted in ICEA’s Initial Comments, this question is unclear. (*See ICEA Initial Comments at 27-29.*) Upon reflection, it appears that this question conflates how utility rates are offered (on standard terms that a customer may join or leave at any time with limited exceptions, such as bundled hold) with retail market products that may be priced based on the day the product is requested and the load profile of the end user. With a utility, there is a “rate” to go back to—although, of course, a customer on the hourly rate will face a constantly fluctuating rate (by design). Because RES have no tariffed rates and price of RES products are based on a wide range of factors, a product that is available today may not have been available yesterday and may not be available tomorrow at the identical price.

Question for the suppliers: Please describe your experiences with accelerated switching in other states, if any

ICEA SUMMARY OF PREVIOUS RESPONSES: Pennsylvania is the furthest along with their accelerated switch process. That document along with information and comments can be found in PA Docket No. L-2014-2409383. (*See, e.g.*, ICC Docket No. 15-0073, ICEA Initial Comments dated March 9, 2015 at 4.) In addition, Ohio has been discussing accelerated switch. The focus of accelerated switching is on two areas (in addition to programming) which include how would a rescission period function and who is responsible for the PJM charges if a customer leaves in a short window prior to meter read.

III.

CONCLUSION

ICEA submits its responses to ORMD questions based on its member companies' substantial experience in competitive retail electric markets in Illinois and other retail choice states. ICEA urges ORMD and the Commission to review ICEA's Responses above together with ICEA's other proposals as presented in the initial three rounds of comments and as summarized in part above, including ICEA's One Star ARES proposal and variable rate proposal (the latter is summarized in part above for the Commission's reference).